U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 10 2006

SRC 03 232 51628

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an applications consultant at Louisiana State University (LSU). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel states that the petitioner "seeks employment in the field of Chemical Engineering and Systems Science. This field is one of substantial intrinsic merit." These remarks imply that chemical engineering and systems science are, together, one single "field." Counsel continues:

> The current focus of [the petitioner's] work is High Performance Computing (HPC). . . . High performance computing systems are used to solve very large and complex problems in science and engineering. In his ongoing work, [the petitioner] successfully supports a wide variety of research projects in the computational chemistry, computational fluid dynamics, climate and hurricane forecasting, coastal erosion and environmental studies, protein sequence and structure analysis, seismic analysis, astrophysics, applied statistics as well as in engineering and mathematics, all of which will be ultimately of paramount importance to the national interest of the United States.

The petitioner has submitted several witness letters in support of the petition. The first round of letters indicated that the petitioner's background in chemical engineering was a key basis for the requested waiver; the second group of letters, submitted following a request for evidence, barely mentions chemical engineering, instead focusing on the petitioner's expertise with computers.

[redacted] now at the California Institute of Technology, left LSU's HPC facility the month before the petitioner began working there. [redacted] "I don't know [the petitioner] personally and have never worked with him." Nevertheless, we note that passages of [redacted] letter are almost identical to passages from counsel's earlier introductory letter.

The director, in denying the petition, offered only the general finding that the petitioner has not met the requirements set forth in *Matter of New York State Dept. of Transportation*. The director did not discuss any of the specifics of the petitioner's claim or any of the petitioner's letters, much less explain why these materials were insufficient. Thus, the director provided the petitioner and counsel with little guidance as to how to construct an effective appeal.

The petitioner's claim of eligibility appears to be based largely on the assertion that scientists in many disciplines require the use of high performance computers, and the petitioner serves the national interest because he is particularly talented with regard to such computers. In this respect, the claim appears to rest on two factors: the intrinsic merit of expertise in high performance computers, and what amounts to a claim of exceptional ability with such computers. A plain reading of the statute shows that exceptional ability is not *prima facie* grounds for a waiver, and the intrinsic merit of the petitioner's specialty does not require waivers for every alien skilled in that specialty. It appears that the petitioner could greatly strengthen his claim by showing how he, in particular, has been responsible for nationally significant work with these computers, beyond the benefit inherent in the effective use thereof. For instance, the petitioner could establish that he is largely responsible for significant improvements in function or efficiency that cannot simply be attributed to routine equipment upgrades. Simply pointing to specific instances in which researchers needed to use a high performance computer, and the petitioner happened to be the computer specialist who assisted those researchers, would not suffice in this regard. If the director intends again to deny the petition, the director should expand upon this line of reasoning.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.